

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the Complaint of)
Edward Heike against Presque)
Isle Electric & Gas Co-op.)

Case No. U-16973

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on August 23, 2012.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 4300 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before September 24, 2012, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before October 4, 2012.

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN ADMINISTRATIVE HEARING
SYSTEM
For the Michigan Public Service Commission

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Richard A. Patterson
Administrative Law Judge

August 23, 2012

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the Complaint of)	
Edward Heike against Presque)	Case No. U-16973
<u>Isle Electric & Gas Co-op.</u>)	

PROPOSAL FOR DECISION

HISTORY OF PROCEEDINGS

Complainant Edward Heike (hereafter Complainant) maintains a seasonal residence and guest house on Montague Trail in Levering, Cheboygan County. Electric service to the residence and guest house is provided by the Presque Isle Electric and Gas Co-op (hereafter the Co-op) and separately metered. Complainant testified that he closes the houses on the property annually for the winter and, as part of that, closes the main breakers. The Co-op reads meters and bills annually. In the past, Complainant's two bills have averaged around \$1,000.00 each. In 2011, he received a bill for almost 4 times the historic average (the increase being attributable to the main house meter number 36703), which his wife paid. Because he recalls following his usual procedure in the fall of 2010, he is convinced the bill is erroneous and filed this complaint on February 7, 2012, requesting that the matter be rectified and he be given a refund of what he perceives is a substantial overcharge.

The Co-op filed an answer to the complaint on April 25, 2012, generally asserting that meter number 36703 was checked and found to be operating within standards. The meter reading in May of 2011, which was triple checked at the time by the reader because it was higher than usual, showed 81,299 kWh. The previous reading in May of 2010, showed 47,015 kWh. Therefore, the indicated usage of 34,284 kWh was billed at \$3,945.00.

An evidentiary hearing was commenced on May 2, 2012, and continued to June 19, 2012. Complainant appeared in Pro Per and testified on his own behalf. Bret A. Totoraitis of the firm Dykema Gossett appeared on behalf of the Co-op. Staff was represented by Assistant Attorneys General Brian W. Farkas and Amit T. Singh.

The Co-op presented the testimony of Maire Chagnon-Hazelman, manager of member services; Messrs Kevin and Paul Carigon, principals of Kevin's Meter Testing; and Mr. Dale Quade, meter technician and former lineman. The Exhibits bound into the record are listed and described at the beginning of the respective transcripts.

Two transcripts were received by this ALJ on May 17 and July 6, 2012, respectively, and reviewed in preparation of this Proposal for Decision. The parties also filed written closing arguments on July 19, 2012¹

¹ The Co-op filed a Motion to Strike the Brief of Complainant, but subsequently withdrew it. However, extra record materials not presented previous to the close of the proofs filed by Petitioner with his closing argument were not considered in formulating this Proposal for Decision.

THE CO-OP'S MOTION FOR MOTION FOR DISMISSAL

At the commencement of the hearing, the Co-op moved to dismiss the complaint based on its contention that Complainant had failed to state a prima facie case. In support, it argued that Complainant had not alleged any violation of any Commission rule, statute, tariff, or any legal standard. The motion was denied based on the fact that staff had properly determined there was a prima facie case under the language of R 460.17501, which includes a broader range of permissible complaints than counsel's assertion. The rule states:

A complaint shall be limited to matters involving alleged unjust, inaccurate, or improper rates or charges or unlawful or unreasonable acts, practices, or omissions of a utility or motor carrier, including a violation of any commission rule, regulation, or order, including a tariff filed or published by a utility or motor carrier, or a violation of a statute administered or enforced by the commission. (emphasis supplied)

FINDINGS OF FACT AND POSITIONS OF THE PARTIES

Complainant sponsored three exhibits, which opposing counsel stipulated could be bound into the record. Exhibit P-1 contains copies of billings from 2009, 2010, and 2011, from the two separate meters, one at the main house (meter number 36703) and the second for a guest house (meter number 13455). Regarding meter 36703, the bills were \$896.00 in 2009; \$1190.00 in 2010, and; \$3,945 in 2011. For meter number 13455, the amounts were \$751.00 in 2009; \$933.00 in 2010, and; \$828.00 in 2011. He also testified that the bill he received in 2012 for the previous year was "normal". Complainant testified that he could not understand the substantial jump. He and his wife were not there after they

closed up in October and there is no way they could have used that much power, in his opinion.

He described the process of closing up and shutting off the power on page 67 of the transcript as follows:

My process, I go into the panel, shut the panel off, all the circuit breakers off, and then I go pull the main out, the service to the little pump house and the wells and all that, and that's an old-time fuse. I just pull it out, and everything is dead.

As an additional indication there was no power, he presented a bill from a plumber for the repair of a frozen pipe in June of 2011, which indicated there was no heat.²

In addition, there was no evidence of flooding, which would indicate the pump was not operating. He received a call in October of 2010, from his next door neighbor who lives there year- round. His neighbor advised him there had been a storm and a loss of power for a couple of days. The neighbor called a couple of weeks later and advised Complainant the power lines were still down on his property. Complainant then called the Co-op. He was advised by his neighbor that the repairs were made the next day.

Complainant has articulated a number of possibilities that, in his opinion, may have caused the spike in his billing. First, that the major storm that occurred in October of 2010, from which his power was disconnected for a couple of weeks, may have somehow affected it, possibly a "back feed" into the meter. Second, that the Co-op misread his meter. Third, the meter was not operating

² The main house is heated by electric baseboard heat.

properly and may have been damaged by the storm. Fourth, someone may have tapped his meter and stolen his electricity.

At the conclusion of Complainant's testimony, the Co-op moved for Summary Disposition based on assertion that he had not sustained the burden of proof in that he had failed to show that Respondent had misread the meter or that the meter had malfunctioned in any way. To emphasize, counsel pointed to Complainant's admission that he does not know if the Co-op had done anything wrong. Counsel for staff disagreed with the motion and asserted that he intended to examine the Co-op's witnesses in that regard. This ALJ denied the motion on the basis that the disparity in amount of usage over past history, in and of itself, created a question of fact.

The Co-op then called Ms. Maire Chagnon-Hazelman, Manager of Member Services. As such, she has six call center representatives and two field representatives who report to her. In response to this complaint, she reviewed the company records pertaining to Complainant's account. From the documents retrieved, she prepared Exhibit R-1, which she described as a "screen shot" printed to hard copy of a log of telephone calls received from him. He initially called to question the bill. During the second call, he requested an adjustment and advised he intended to file a complaint with the Commission. The representative went through his usage and offered to perform a meter test. She also requested he do an energy audit questionnaire. He later called back with several readings, reaffirmed that the main had been shut off for the winter and that he hoped for a refund. At that point, according to the log, he was blaming

the problem on the storm. They reviewed his account and found that it had been paid, except for a late fee, which, as a courtesy they waived. A service representative also went through an energy audit with him and scheduled an appointment for an in house tester to go there on August 25. The test was performed and she was advised the meter was performing within MPSC rules. Mr. Heike was not satisfied with this and she recommended that an independent test with Kevin's Meter Testing be performed. In a later call, Complainant also posed a question whether someone could have stolen some of his power.

After reviewing the tariffs and meter reading procedures, Ms. Chagnon-Hazelman, introduced Exhibit R-10, which is the record of the meter reading of Complainant's meter, among others, in which it is indicated it was triple checked, due to the fact that the reader ascertained the usage was higher than usual.

This matter could not be concluded within the time initially allotted for hearing. Therefore, the matter was continued to June 19, 2012. At that time, the Co-op presented three witnesses. The first two were Messrs Kevin and Paul Carigon, principals of Kevin's Meter Testing (KMT) in Atlanta, Michigan, who testified by conference call. The third was Mr. Dale Quade, who has been a meter technician for the Co-op for 25 years.

Mr. Kevin Carigon testified to his testing and the certification of the equipment used to test the subject meter, and sponsored Exhibits R-21 and 22. Exhibit R-21 is a series of accuracy reports on the meter testing equipment used in testing the subject meter performed on January 8, 2012, September 4, 2011, April 4, 2011, and January 6, 2011. Mr. Carigon explained that the unit is tested

at various loads and indicated that at all times it was determined be within acceptable accuracy parameters. Exhibit R-22 is a certificate of calibration issued by the manufacturer, Radian Research, dated March 6, 2009, previous to the testing of the subject meter; and Exhibit R-23 is a similar certification dated after the subject test on January 10, 2012. In sum, Mr. Carigon established the testing equipment was operating within acceptable parameters at all the times indicated, characterizing it as “very, very accurate” (T, p 171).

Mr. Paul Carigon testified that he performed the test of the subject meter on October 24, 2011. His test report was entered as Exhibit R-15. A memorandum of his activities was entered as Exhibit R-20. First, he indicated that he found no “creep”, meaning that the meter disk can move without any electricity being drawn through the meter. He observed the seal was intact; there was no damage to the meter, or any evidence of tampering. He then tested the meter at full and light loads and recorded those on Exhibit R-15. In sum, he indicated the meter was accurately recording electrical usage.

Both Messrs. Carigon admitted that the test date of October 24, 2011, post dated the storm and power outage by some 10 months, which Complainant contends may have caused the spike in his alleged usage. Mr. Paul Carigon indicated, however, that meters of this nature would not record outside or line voltage. (T, p 180) Mr. Dale Quade, when asked, stated the rather obvious that meters cannot repair or correct themselves. (T, p 199)

Mr. Quade also testified he tested the subject meter on August 25, 2011. He too observed no evidence of damage from lightning, impact, or tampering,

and affirmed that the meter would only record voltage going through it as opposed to line or voltage outside the meter. According to him, in most instances of meter malfunctions, they stop or slow down as opposed to accelerating. The equipment he used for the test was tested by KMT on March 29, 2011, and found to be accurate (Exhibit R-14). Mr. Quade's test indicated that the meter was operating at a weighted average of 100.31, which is well within acceptable limits imposed by the Commission of plus or minus one percent.

Mr. Quade was asked if he had heard Complainant's testimony regarding his process of shutting down the power and was asked to speculate that if he had shut down only the main in the little pump house, if power could still be routed through the main at the house. He agreed that if that were the case, due to the fact that the main at the pump house was in line beyond the main in the house, that it could and that the usual appliances and electric heat could generate usage to the extent Complainant was billed if operated on a continuous 24/7 basis. However, the quoted testimony of Complainant on page 3 belies, in that that shutting down the pump house main was only part of the process.

DISCUSSION

This case presents a dilemma. Complainant swears he shut off the power in his usual manner as detailed above as he has done for years. He also introduced evidence of a pipe bursting from freezing and the fact there was no flooding, which would indicate the heat was not on. On the other hand, The Co-op presented credible evidence that the subject meter tested as accurate on

two occasions, albeit some months after the storm event, which Complainant speculates may have had something to do with the high usage indicated. In addition, each time the meter was tested, there was no evidence of damage or tampering. Additionally, the lines that came down during the storm in the fall of 2010 were those to the meter in the guest house, which has a separate meter. Therefore, it appears that the storm had no impact on the meter in question. Complainant is critical of the Co-op in not reading the meter at or around the time of the storm.

Mr. Quade concluded his testimony by giving an estimate of usage if the water heater and electric heat were operating on a continuous basis of some 100,000 kWh for a year. Therefore, he posited that if operated for half a year the usage could easily be as much as Complainant was billed.

The Co-op relies heavily on the burden of proof in complaint cases and asserts that Complainant has consistently failed to identify any statute, rule, regulation, order, or tariff that it has violated. The burden of proof in complaint cases is assigned in R 460.17515, which provides:

Rule 515. The complainant generally shall have the burden of proof as to matters constituting the basis for the complaint and the respondent shall have the burden of proof as to matters constituting affirmative defenses. The burden of proof, however, may be differently placed, or may shift, as provided by law or as may be appropriate under the circumstances.

Initially, the Co-op addressed Complainant's criticism that it did not periodically read the meter at intervals less than annually and at the time of the restoration of power subsequent to the storm in the fall of 2010. First, the Co-op

correctly asserts it is authorized to bill seasonal customers annually, and, hence, only read the meter annually.

Rule 13 of the Administrative Rules on Consumer Standards and billing Practices for Electric and Gas Residential Service provides, in relevant part:

- (1) Except as specified in this rule, a utility shall provide all residential customers with an actual monthly meter reading as defined in R 460.102...
- (2) Notwithstanding the provision of subrule (1) of this rule, a utility may render estimated bills to seasonally billed customers in accordance with tariffs approved by the commission.

Rule 17(1) provides:

A utility shall send a bill each billing month to its customers in accordance with approved rate schedules unless the utility and the customer agree to another billing interval. A utility shall send a bill to customers by mail unless the utility and the customer agree to another method of delivery. A utility that is authorized to seasonally bill customers or to use a customer read system shall send a bill in accordance with the tariffs approved by the commission.

First revised Sheet No. D-5.01 of schedule A (Residential Service) in the Co-op's electric rate book included the following provision regarding qualified seasonal customers.

Upon written agreement of the Cooperative and seasonal Member-Consumers that qualify for, and elect to receive. Service under this rate schedule, bills for service provided hereunder may be rendered annually. Annual bills will be calculated using Schedule A rate applied to the Member-Consumer's annual energy consumption along with the Annual Availability Charge, which shall be prepaid.

There is no dispute that Complainant is qualified and elected this manner of billing for a number of years. Therefore, it is apparent that the Co-op acted within its authority, read the meter, and billed accordingly. It would also have no

obligation or reason to read the meter at the time of the storm or restoration of service.

The Co-op also asserts that there is no error. First, the meter tested on two occasions was operating within tolerance and would not have malfunctioned previously and fixed itself. Meter errors adjustments are governed by Rule 309(1), stating

An adjustment of bills for service for the period of inaccuracy shall be made for over registration and may be made for under registration under any of the following conditions:

- (a) If a meter creeps.
- (b) If a metering installation is found upon any test to have an average inaccuracy of more than 2.0%.
- (c) If a demand metering installation is found upon any test to have an average inaccuracy of more than 1.0% in addition to the inaccuracies allowed under R 460.3609.
- (d) If a meter registration has been found to be inaccurate due to apparent tampering by a person or persons known or unknown.

The evidence recited above indicates there was no creep, the meter was found to be well within 1% accuracy, it was not a demand meter, and there was no evidence of tampering. Therefore, I find there was no error.

As to the possibility of theft, the testimony indicates at the time of both tests, the meter was properly sealed indicating there had been no tampering.

In sum, the Co-op contends that Complainant has put forth no evidence to support any of his suspicions as to why the high billing may have occurred. In support, it points to *In re the complaint of James Edward Schmidt against Consumers Energy Company*, Opinion and Order MPSC Case No. U-14237 (March 29, 2005) where, at page 5, the Commission stated that a complainant

cannot meet his or her burden of proof with “unsupported...allegations...where no evidentiary support was entered into the record at hearing”.

However, in this case, Petitioner has come forward with evidence to support his assertion that he shut off the power for the winter of 2010. First he testified and entered an invoice (Exhibit P-2) for repairing a frozen water line in June of 2011. In addition, the fact that a pipe had burst and the home was not flooded indicates that the well pump was not on. Therefore, there is support for the proposition that the power was off over the winter of 2010.

On the other hand, the Co-op has presented proof that the subject meter was in working order when twice tested, albeit significantly after the fact. It also presented testimony that a malfunctioning meter cannot “fix itself”. Its proofs and legal arguments also belie Complainant’s assertion that it should have read the meter after the storm or that there was some error in the read in May of 2011.

The imposition of the burden of proof on the Complainant is not absolute despite the Co-op’s repeated assertion that Complainant had the burden of proof and did not sustain it. To repeat R 460.1751 provides:

Rule 515. The complainant generally shall have the burden of proof as to matters constituting the basis for the complaint and the respondent shall have the burden of proof as to matters constituting affirmative defenses. The burden of proof, however, may be differently placed, or may shift, as provided by law or as may be appropriate under the circumstances. (emphasis supplied)

As indicated by the underlined language, it may be differently placed if appropriate under the circumstances. As stated above, Complainant did provide evidence which tends to demonstrate that there was no power to the house causing a pipe to freeze and burst. The fact it did not flood the home is an

additional indicator that it must be assumed the well pump was not energized. On the other hand, the Co-op has proven that the meter was accurate at the time it was tested twice, albeit some months after the fact. By inference, however, it would have been so operating previously in that it obviously could not fix itself. As pointed out by the Co-op, Complainant has not identified any specific wrong that it may have performed. The Co-op has searched for any potential rule violation and successfully defended itself in regards to each. It would be unfair at this point to shift the burden of proof to the Co-op under *Superior Public Rights, Inc. v. Department of Natural Resources*, 80 Mich App 72; 263 NW2d 290 (1977) which requires this Tribunal to establish the burden of proof in a contested case hearing. It is also required that the parties be notified before commencement of the hearing. *Zenith Industrial Corporation v. Department of Treasury*, 130 Mich App 464; 343 NW2d 495 (1983).

CONCLUSION

For the reasons stated above, I find that while Complainant has presented evidence that the power in his two residences may have been disconnected, he has not come forward with any evidence that the increased usage and consequent bill was attributable to any action or inaction of the Co-op. It is therefore, recommended that the Commission enter an order dismissing his complaint with prejudice.

Any arguments not specifically addressed in this Proposal for Decision were deemed irrelevant to the finding and conclusions recited above.

MICHIGAN ADMINISTRATIVE
HEARING SYSTEM
For the Michigan Public Service Commission

A handwritten signature in black ink, appearing to read 'R. A. Patterson', is positioned above a horizontal line.

Richard A. Patterson
Administrative Law Judge

August 23, 2012
Lansing, Michigan